IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 351 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UTTAR GUJ DASHNAM GAUSWAMI KELVANI MANDAL
Versus
PATEL SAW MILLS' OWNER

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Appearance :
MR PRAKASH K JANI for the applicant
MR MEHUL SHARAD SHAH for the Opponent

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 01/03/2006

ORAL JUDGMENT :

The petitioners herein are the original plaintiffs of Regular Civil Suit No.4 of 1983. The aforesaid suit was filed by the plaintiff, which is a public trust. The said suit was filed for

getting the decree for possession from the respondent, who was original defendant of the said suit. The suit property is situated in Visnagar in Survey No.53, 54 which consists of open land and out of the said land, some portion was let out to the defendant with effect from 1.4.1968 at a monthly rent of Rs.71.

2 It is the say of the plaintiff that in spite of written covenant in the rent note executed by the defendant in favour of the plaintiff-trust that he will not carry out any permanent structure or construction, yet the defendant has made such structure like latrine, bathroom, water tank and thereby committed the breach of the provisions of the Bombay Rent Act and, therefore, on the aforesaid ground decree for possession was sought for. Another ground which was pressed into service in the plaint was that the plaintiff-trust requires the suit premises for their bona fide use as the trust proposed to construct hostel for girls in the leased premises. The aforesaid suit was filed for getting the possession on the aforesaid two grounds, namely, (1) erecting permanent structure by the defendants, and (2) bona fide requirement of the suit premises by the plaintiff.

3 The said suit was resisted by the defendant by filing his written statement Exhibit 15. As per the averments in the written statement it is pleaded by the defendant that earlier a suit was filed by the plaintiff being Regular Civil Suit No.20 of 1967 and at that time it was decided between them that the defendant would execute a fresh rent note in favour of the plaintiff-trust with effect from 21.3.1968 and the rent was fixed at Rs.71 per month. The defendant denied that he has

committed any breach of provisions of the Bombay Rent Act. It is also the say of the defendant that the alleged construction is removable one and of a temporary character and as and when the defendant closes his business, he would hand over possession of the premises by restoring the status of the land into its original condition. The defendant also denied the plaintiff's claim for bona fide requirement.

4 The learned trial Judge after framing the issues and after recording the evidence dismissed the suit of the plaintiff. Against the aforesaid decree of the trial Court, the original plaintiff (petitioner herein) preferred an appeal being Regular Civil Appeal No.70 of 1992 before the District Court at Mehsana. The said appeal was heard by the learned 3rd Joint District Judge, Mehsana, who, by his judgment and decree dated 24th December 2001 dismissed the same. Against the aforesaid judgment and order of the appellate Court, the original plaintiff has preferred this Civil Revision Application under Section 29(2) of the Bombay Rent Act.

5 I have heard Mr P.K.Jani, learned counsel for the petitioner and Mr Shah for the respondent. So far as the controversy in connection with the alleged permanent structure is concerned, both the Courts below have concurrently found that the construction in question is not of a permanent nature, the construction is that of latrine, bathroom and water tank. The learned Appellate Judge found that the property was let out to the defendant for the purpose of his sawmill business. Initially, the property was let out at a monthly rent of Rs.41.66 paisa and subsequently the rent was increased to Rs.71 per month in

view of the compromise arrived at in Regular Civil Suit No.20 of 1967. The learned Appellate Judge has also considered the rent note at Exhibit 60 wherein it is specifically stated that whatever construction made by the defendant in the land for the purpose of business as well as construction of room has to be continued and at the time of vacating the premises, the defendant has to take away the construction and has to remove the same at his own cost. The learned Judge has found that such construction was made long ago and after a long time the plaintiff wants to take advantage of the same. The learned Appellate Judge found that the construction in question was made about 10 years back prior to filing of the suit. The learned Appellate Judge has also found that as per the panchnama at Exhibit 69 the construction appears to have been made long back i.e. 15 years ago. The Appellate Judge, therefore, found that no case is made out by the landlord for getting the possession under Section 13(1)(b) of the Bombay Rent Act. The learned Appellate Judge has also considered the evidence of the plaintiff where the witness of the plaintiff, one Ishwarpuri, in his deposition at Exhibit 59 has admitted that even if the construction in question is removed, it is not likely to cause damage to the property of the plaintiff and original position can be restored. It is also the requirement of law that at the time of passing the decree under Section 13(1)(b) of the Rent Act, the Court has to consider whether such alleged construction can be removed without causing damage to the rented property, and if it can be removed without any damage to the rented property, the decree cannot be passed under the said provision. The Appellate Judge has specifically found that the alleged construction can be removed without any damage

to the rented property. Considering the aforesaid aspect of the matter, the learned Appellate Judge has accepted the finding of the trial Court that the plaintiff has failed to make out his case for getting the possession under Section 13(1)(b) of the Bombay Rent Act. So far as the question of bona fide requirement is concerned, the Appellate Judge has found in paragraph 18 of his judgment as under:-

> "18. Now so far as bonafide requirement for occupation for the purpose of trust is concerned it may be stated that the defendant is in possession of the suit premises since long and as such there is no challenge to the contention of the defendant that the plaintiff-trust is in the possession of vast open land behind the Boys Hostel and as such no evidence has been adduced by the plaintiff which suggests that the plaintiff has sufficient fund to construct ladies Hostel or that it has any intention to start the construction of ladies hostel and it appears to me that it is only a device for obtaining the possession of the suit property at any cost and even otherwise also it may be stated that when the defendant has started business since long naturally he must have acquired good-will in the business and, therefore, if he would be ordered to be evicted then the deft. would suffer greater hardship than the plaintiff himself and merely because the defendant has admitted that other premises are available in town it cannot be said that plaintiff has proved that the suit premises are required reasonably and bonafide and therefore, point No.2 is answered in the negative and point No.3 is answered to the effect that the defendant

would suffer greater hardship by passing the decree than by refusing to pass it."

6 It is required to be noted that this revision application is preferred under Section 29(2) of the Bombay Rent Act. In such revision application, this Court is required to see whether any error of law is committed by the Appellate Judge. In the present case, the finding of the Appellate Court is based on appreciation of the oral as well as documentary evidence on record. Regarding bona fide requirement also, the Courts below have found that the plaintiff has failed to prove his case. In my view, it cannot be said that the Appellate Court has committed any error of law in appreciating the evidence on record or has committed any error in reaching to the conclusion that the plaintiff has failed to prove his case. Considering the aforesaid aspects, I do not find any merit in this revision application. Hence, the same is dismissed. Rule is discharged with no order as to costs.

(P.B.Majmudar, J.)

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